



2024:DHC:4247



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.05.2024

+ CRL.M.C. 4074/2024

PAWAN DHANPATRAI MALHOTRA Petitioner

Through: Ms.Shriya Chanda, Adv.

versus

MAHENDER KHARI

..... Respondent

Through: Mr.Aditya Singh, Adv. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)CRL.M.A. 15491/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.C. 4074/2024 & CRL.M.A. 15490/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 05.04.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal District & Sessions Judge, South District, Saket Courts, New Delhi (in short, 'Revisional Court') in Criminal Revision Petition bearing No. 14/2024, titled *Pawan Dhanpatrai Malhotra v. Mahender Khari*, whereby the learned Revisional Court dismissed the said revision petition filed by the petitioner herein.



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3. The above Revision Petition was filed by the petitioner, challenging the Order dated 16.04.2022 of the learned MM-01 South District, New Delhi in Complaint Case bearing No. 1398/2020, titled ***Mahender Khari v. Pawan Dhanpatrai Malhotra***, dismissing the application filed by the petitioner under Section 219 of the Cr.P.C. The said complaint has been filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), alleging dishonour of four cheques dated 15.07.2019, 15.08.2019, 15.09.2019 and 15.10.2019, however, a single/combined complaint was filed by the respondent qua the dishonour of the aforesaid four cheques, after sending a single/combined legal notice of demand dated 06.11.2019.

4. Placing reliance on Section 219 of the Cr. P.C., the learned counsel for the petitioner submits that the complainant can at best consolidate three offences in a year in a complaint. She submits that, therefore, not more than three cheques could have been consolidated in one complaint by the respondent herein.

5. The learned counsel for the petitioner, placing reliance on the order passed by the Supreme Court in ***Vani Agro Enterprises v. State of Gujarat & Anr.***, (2021) 16 SCC 132; and of this Court in ***Gaurav Mittal v. State of NCT of Delhi***, 2023 SCC OnLine Del 1528, submits that mere issuance of a single/common notice by the complainant cannot suffice for not following the mandate of Section 219 of the Cr.P.C.. She submits that as the cheques were of different dates, therefore, not more than three cheques can be consolidated into one complaint.



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6. On the other hand, the learned counsel for the respondent, placing reliance on the judgments in *Sharma Contracts (India) Pvt. Ltd. v. State & Anr.* 2012 SCC OnLine Del 310; *Unique Infoways Pvt. Ltd. & Ors. v. M/s MPS Telecom Private Limited*, 2019:DHC:1661; Judgment dated 05.02.2024 of the Karnataka High Court in Criminal Petition bearing No. 5909 of 2023, titled *A Adinarayana Reddy v. S. Vijayalakshmi & Anr.*; and *U-Turn v. State of Gujarat*, 2024 SCC OnLine Guj 1427, submits that the offence is completed only when notice under proviso 'b' to Section 138 of the NI Act is given by the holder of the cheque to the drawer, and the drawer thereafter fails to make the payment within a period of 15 days of the receipt of the notice. He submits that it has been consistently held that where a single notice has been served on the drawer, it would be considered as a single offence and not multiple offences and, therefore, the rigours of Section 219 of the Cr.P.C. will not be attracted.

7. I have considered the submissions made by the learned counsels for the parties.

8. Section 219 of the Cr.P.C. reads as under:-

“219. Three offences of same kind within year may be charged together.—(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of



punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.”

9. Section 219 of the Cr.P.C. falls in Chapter XVII of the Cr.P.C., sub-Chapter “B- Joinder of Charges’. It states that where a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three. Therefore, only for up-to three offences of the same kind committed by an accused within a period of twelve months, can be tried together in one trial.

10. Section 138 of the NI Act provides for the penalty in case of dishonour of cheque for insufficiency of funds in the account of the drawer of the cheque. It reads as under:

“138. Dishonour of cheque for insufficiency, etc. of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is



insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

11. Therefore, on dishonour of the cheque, the payee or holder in due course of the cheque has to make a demand for the payment of the cheque amount by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

12. In terms of Section 142(1)(b) of the NI Act, the complaint for



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an offence under Section 138 of the NI Act can be filed only upon the cause of action arising under clause (c) of the proviso to Section 138 of the NI Act, that is, where the drawer of the cheque fails to make the payment of the amount of the cheque to the payee or the holder in due course of the cheque, within fifteen days of the receipt of the notice in terms of Proviso (b) to Section 138 of the NI Act.

13. In *Sharma Contracts* (supra), this Court rejected the challenge under Section 219 of the Cr.P.C. to the maintainability of the complaint filed under Section 138 of the NI Act for 14 cheques, by placing reliance on various precedents holding that the cause of action giving rise to a complaint is upon the service of notice contemplated under proviso (b) to Section 138 of the NI Act and not upon the dishonour of the cheque and therefore, Section 219 of the Cr.P.C. shall not be applicable where the complaint is based on a single notice being issued under proviso (b) to Section 138 of the NI Act, though for more than three cheques.

14. In *Ambica Plastopack Pvt. Ltd. & Anr. v. State & Anr.*, 2013 SCC OnLine Del 4416, this Court reiterated that the cause of action for filing a complaint under Section 138 of the NI Act is the service of notice under Section 138 of the NI Act and not the dishonour of cheques. Therefore, Section 219 of the Cr.P.C. shall not apply where one notice for dishonour of cheques is issued.

15. In *Unique Infoways Pvt. Ltd.* (supra), this Court observed that as all the six cheques, which were the subject matter of the complaint therein, had been given in relation to the same transactions, therefore, Section 219 of the Cr.P.C. would not be an impediment to the



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summoning of the accused in a single complaint.

16. The High Court of Karnataka in ***Adinarayana Reddy*** (supra), also considered the issue whether a single complaint is maintainable for multiple cheques issued by the accused for the same cause of action. The Court held that where the cheques are issued for the same cause of action and a common notice was served on the accused, a single complaint for dishonour of multiple cheques was maintainable.

17. The High Court of Gujarat in ***U-turn*** (supra), placing reliance on the above judgment of the Karnataka High Court, has also rejected the similar plea of the accused.

18. As far as the ***Vani Agro Enterprises*** (supra) is concerned, it was a case where the complainant had filed four complaints and was seeking consolidation of the same. The Supreme Court observed that there is no provision in the Cr.P.C. providing for consolidation of cases.

19. ***Gaurav Mittal*** (supra) is only an *ad interim* order and cannot be treated a binding precedent on the issue.

20. I must however, also take note of the Constitution Bench judgment of the Supreme Court in ***Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re***, (2021) 16 SCC 116, wherein, the Supreme Court, while upholding the course adopted by the Supreme Court in ***Vani Agro Enterprises*** (supra), recommended that a provision be made in the NI Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 of the NI Act in the space of 12 months, notwithstanding the restriction in Section 219 of the Cr.P.C. However, it did not consider the case where



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post the dishonour of more than three cheques, a single notice of demand is sent by the payee or the holder in due course of the cheque to the drawer of the cheque. On the other hand, it further held that there is no ambiguity in Section 220 of the Cr.P.C. in accordance with which several cheques issued as part of the same transaction can be the subject matter of one trial.

21. In the present case, the respondent has alleged that the cheques in question were given pursuant to a single transaction and a common notice was served on the petitioner on the dishonour of these cheques. Therefore, applying the above precedents, no fault can be found in a single complaint filed by the respondent on the dishonour of the cheques.

22. I, therefore, find no merit in the present petition. The same is dismissed. The pending application also stands disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 22, 2024/Arya/VS

Click here to check corrigendum, if any